

*In Re:* Williford Construction, Inc. )  
 Personal Property Account No. P-078979 ) Shelby County  
 Tax years 2004, 2005 )

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time of hearing shall result in the appeal being dismissed without any further right of administrative appeal.

Acts 2007, Public Chapter No. 332, section 1. This amendment took effect immediately upon becoming a law.

In Thomas v. State Board of Equalization, 940 S.W.2d 563 (Tenn. 1997), a Davidson County homeowner sought judicial review of the State Board's dismissal of her appeal due to non-payment of the undisputed portion of the tax on the property in question before the delinquency date. On the meaning of Tenn. Code Ann. section 67-5-1512(b)(1)(B) (prior to the quoted amendment thereof), the Supreme Court of Tennessee opined that:

The phrase "condition for appeal" could refer to either filing an appeal or maintaining an appeal....The statute is simply not clear. Furthermore, the statute does not prevent the reinstatement of an appeal when the taxpayer pays the undisputed portion of the tax in a timely manner after the entry of an initial order dismissing the appeal.<sup>2</sup>

940 S.W.2d at 567.

The 2007 amendment to Tenn. Code Ann. section 67-5-1512(b)(1)(B) was presumably designed to resolve the ambiguity perceived by the Court in the Thomas case. In deference to that ruling, the State Board had habitually refrained from dismissing an appeal on the ground of delinquent taxes on the property in question. Instead, the assigned administrative judge would routinely enter an order holding such appeal in abeyance pending receipt of satisfactory proof of payment of the amount past due.

Arguably, the impact of the quoted amendment could be avoided or mitigated by simply delaying the "time of the hearing" of a case (by continuance) until the stated "condition for appeal" has been met. In the opinion of the administrative judge, however, the consequent delay would only tend to frustrate the apparent purpose of the legislation. Moreover, the State Board would have virtually unbridled discretion as to whether to grant such a reprieve.

It might be contended that no appeal which was pending before the agency on the effective date of Public Chapter No. 332 (June 4, 2007) should be subject to dismissal thereunder. But in the absence of a saving or grandfather clause which could easily have been included in the statute, the administrative judge must infer that the legislature intended the date of *hearing* – not the date of *filing* – of an appeal to be determinative. Indeed, it seems counterintuitive to suppose that the law would accord preferential treatment to pre-existing appeals by property owners who may already have longstanding delinquencies. Surely such persons would enjoy no constitutional right to an administrative hearing before the State Board without at least paying the undisputed portion of the tax for the tax year(s) in controversy.

There remains the question of whether Tenn. Code Ann. section 67-5-1512(b)(1)(C), which was not explicitly affected by the recent amendment, should be construed as an exception to the general rule enunciated in Acts 2007, Public Chapter No. 332. Respectfully, the administrative judge cannot subscribe to an interpretation whereby only owners of property

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<sup>2</sup>With all due respect to the Court, it is unclear how a taxpayer who has failed to pay the undisputed portion of the tax prior to the delinquency date could later be deemed to have paid such amount "in a timely manner."



in Shelby County would be immune from outright dismissal of an assessment appeal because of unpaid taxes. It is difficult to conceive of any rational basis for such an anomalous result.

Order

It is, therefore, ORDERED that these appeals be dismissed due to the taxpayer's failure to pay the undisputed portion of the taxes on the subject property by the time of the scheduled hearing.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 24<sup>th</sup> day of August, 2007.



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PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: G. Shayne Smith, CPA, Lenahan, Smith & Bargiachi, P.C.  
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